

## AMICUS CURIAE BRIEF POLICY

### A. CRITERIA FOR NEBRASKA DEFENSE COUNSEL ASSOCIATION AMICUS CURIAE BRIEFS

The Nebraska Defense Counsel Association (NDCA) recognizes the value of amicus curiae briefs in appropriate cases. NDCA has therefore created an Amicus Curiae Committee to consider NDCA participation in briefs Amicus Curiae. The guidelines below address Committee consideration on the involvement of the NDCA as amicus curiae. The policy standards guide NDCA participation of NDCA as amicus curiae.

### B. AMICUS CURIAE POLICY

1. Independence. The NDCA will remain independent of the parties, including the party litigant who requests amicus curiae participation by the NDCA. Maintaining its independence will best serve the interest of the NDCA in furthering a credible and independent amicus curiae participation program that focuses on the values and principles of general application on whether the NDCA shall file an amicus curiae brief.
2. Authority. The Amicus Curiae Committee shall review all requests for amicus curiae participation by the NDCA, and provide a recommendation to the Board. The Board shall make the ultimate decision on whether the NDCA shall file an amicus curiae brief.
  - A. By agreeing to be a member of the Committee, all Committee members agree to review the materials sent to him or her promptly and to participate in the email discussion of the merits of the request according to these guidelines. If a Committee member is unable to participate in a discussion, he or she will notify the chair and co-chairs. The Committee shall be composed of a chair person who is a member of the Board, and four (4) other members of NDCA, who may or may not be members of the Board.
3. Area of Substantial Interest to the NDCA. Before the NDCA will participate as amicus curiae, the case must concern issues of substantial interest to the NDCA. Cases are considered to be in an area of substantial interest to the NDCA when issues in the case:
  - A. Involves an issue of substantial interest to the members or clients of members of the Nebraska Defense Counsel Association.
  - B. Involves an issue that presents a novel or previously unresolved question, the disposition of which is likely to have broad-range impact beyond the facts of the particular case.

- C. Concern the independence or integrity of the judiciary or the bar.
  - D. Concern the effectiveness or accessibility of the legal system, or
  - E. Are determined by 75% of the total membership of the governing body of the NDCA to be of substantial interest to the NDCA.
4. Necessity of Amicus Brief. The Amicus Curiae Committee will consider whether briefs already before the court provide the court with a complete picture of how the particular issue and decision impact the interests of the NDCA as set forth in this policy. The NDCA will generally decline to participate as amicus curiae where the issues of concern to the NDCA are already fully developed.
  5. Brief Standards. The Amicus Curiae Committee shall ensure an amicus curiae brief filed by the NDCA is of high quality. The Committee may decline to file an amicus brief in cases where lack of time or other considerations may compromise the quality of the brief.
  6. Request from Appellate Court. The NDCA will honor a request from an appellate court barring exceptional circumstances.
  7. Costs. The recommendation to the Board will include the anticipated costs, if any, to the NDCA.

**C. PROCEDURE FOR REQUESTING AMICUS BRIEF PARTICIPATION**

1. The request shall be directed to the President of the NDCA who will refer the matter to the Amicus Committee within 24 hours of receipt of the request. The request shall be in electronic mail format with all documents in support of the request attached in electronic files.
2. Unless there are exceptional circumstances, an amicus curiae request will be granted only at the appellate level where the issue will be determined.
3. The requesting party shall provide the President of the NDCA with the following information in its request:
  - A. A statement that sets forth specific legal issue(s) that the requesting party believes the NDCA should address.
  - B. The facts of the controversy and the status of the litigation.
  - C. A statement of the principles of law to be supported together with an explanation of applicant's reasons that this case is appropriate for NDCA involvement.

- D. A full disclosure of personal or professional interest in the matter of any applicant or proponent of the application.
  - E. The name and address of a willing brief writer, which may or may not be accepted by NDCA.
  - F. A schedule of all relevant deadlines and due dates.
- 4. The requesting party shall provide copies of all appellate briefs filed in the case and, if requested by the Committee, the record on review.
  - 5. The Amicus Curiae Committee will not make a recommendation to the Board before the requesting party has filed its initial appellate brief.

**D. AMICUS COMMITTEE: INTERNAL PROCEDURES**

- 1. Necessity of Request Complying with Procedures: A request for amicus curiae may not be considered from a private party if the requesting party fails substantially to comply with the published procedures for requesting amicus curiae assistance.
- 2. Notice: The Amicus Curiae Committee will attempt to notify all parties of the receipt of the request prior to the committee action, to the extent practicable. Notice shall be posted on the NDCA web site and may also be given to appropriate NDCA Board Members. The notice will invite comment on whether the request meets the criteria set out in this policy and any deadline for comment; however, the Amicus Curiae Committee may make its recommendation to the Board prior to receipt of comment by parties or others.
- 3. Committee Action on Request: A properly presented request shall be acted upon at the earliest feasible date by a quorum of the Amicus Curiae Committee. The chair, or his or her delegate, shall ensure that as many members of the committee as are available shall be notified of the request and provided with appropriate materials to evaluate the issue of whether an affirmative recommendation shall be made to the NDCA Board. The committee may meet via telephone conferencing when necessary to expedite the process or for efficiency reasons.
- 4. Content of Recommendation: Upon obtaining a recommendation supported by a quorum of the committee, the chair of the committee shall cause a written recommendation to be prepared and presented to the NDCA Board. The recommendation shall include:
  - A. An affirmative or negative recommendation.
  - B. A brief statement of why the committee believes that an amicus curiae participation is warranted or should be declined.

- C. A brief analysis of the issues raised by the case and a recommendation stating the position the committee believes should be taken by the NDCA.
  - D. A statement of costs associated with complying with the request and suggestions regarding appropriate individuals to author the brief.
5. Emergency Procedure: Where the issues raised in an appeal have substantial impact on the members of the NDCA, the committee or the Board may recommend that the President of the NDCA act upon an amicus curiae request. No request for participation shall be granted if either the Association or the Committee concludes that a quality brief cannot be obtained in the amount of time available.
6. Preparation and Signing a Brief: The Amicus Curiae Committee will oversee and assist with the preparation and filing of the brief as necessary. Any amicus brief submitted to the court shall be signed by the author of the brief and by the President of the NDCA or his or her designate.